

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL ACTION NO. 3:12-CV-561-MOC-DCK**

**CONSTANCE VIOLA,** )  
 )  
 **Plaintiff,** )  
 )  
 **v.** )  
 )  
 **BROCK & SCOTT, PLLC,** )  
 **CHASE HOME FINANCE, LLC,** )  
 **MORTGAGE CONTRACTING** )  
 **SERVICES, LLC, AMERICAN** )  
 **HOME CLOSING, INC., FRANKLIN** )  
 **AMERICAN MORTGAGE CO., and** )  
 **JPMORGAN CHASE BANK, N.A., et al.,** )  
 )  
 **Defendants.** )  
 \_\_\_\_\_ )

**MEMORANDUM AND  
RECOMMENDATION**

**THIS MATTER IS BEFORE THE COURT** on Defendants’ “Motion To Dismiss” (Document No. 3) filed September 19, 2012; “Defendant Mortgage Contracting Services, LLC’s Motion To Dismiss Or, In The Alternative, For More Definite Statement” (Document No. 5) filed October 18, 2012; and “Defendant Mortgage Contracting Services, LLC’s Amended Motion To Dismiss Or, In the Alternative, For More Definite Statement Or To Strike” (Document No. 6) also filed October 18, 2012.

This matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §636(b), and is now ripe for disposition. Having carefully considered the motions, the record, and the applicable authority, the undersigned will respectfully recommend that the motions to dismiss (Document Nos. 3 and 6) be granted. In light of Defendant Mortgage Contracting Services, LLC’s amended motion to dismiss (Document No. 6), it appears appropriate to deny its original motion to dismiss (Document No. 5) as moot.

The undersigned entered a Roseboro “Order” (Document No. 8) on October 24, 2012

directing Plaintiff to “file responses to the pending “Motion To Dismiss” (Document No. 3) and “Defendant Mortgage Contracting Services, LLC’s Amended Motion To Dismiss Or, In The Alternative, For More Definite State Or To Strike” (Document No. 6) on or before **November 5, 2012.**” The undersigned also advised the *pro se* Plaintiff that failure to file timely and persuasive responses would likely lead to the dismissal of this lawsuit. (Document No. 8). To date, no response has been filed and the time to do so has lapsed.

In addition, the undersigned notes that it appears that Defendants have shown good cause for dismissal of Plaintiff’s “Complaint” (Document Nos. 1, 1-1, and 1-2). First, the Chase Defendants assert that Plaintiff has failed to allege facts sufficient to establish that this Court has subject matter jurisdiction and failed to allege facts sufficient to state any claim upon which relief may be granted. (Document No. 3). Next, the Chase Defendants assert that they have not received proper service of a summons and complaint. Id.

Defendant Mortgage Contracting Services, LLC also asserts that Plaintiff has failed to state a claim upon which relief may be granted. (Document Nos. 5-7). Defendant Mortgage Contracting Services, LLC further contends that each of Plaintiff’s causes of action asserted against it, if any are clearly stated, do not support a claim that this court has jurisdiction over this matter under either 28 U.S.C. § 1331 or 28 U.S.C. § 1332. (Document No. 6).

The undersigned has reviewed Plaintiff’s “Complaint” (Document Nos. 1, 1-1, and 1-2) and agrees that it is deficient. In short, the undersigned is unable to determine what relief Plaintiff seeks or the basis for this Court’s jurisdiction. See Fed.R.Civ.P. 8. As such, Plaintiff’s “Complaint” should be dismissed without prejudice to re-file.

### **RECOMMENDATION**

**BASED ON THE FOREGOING**, the undersigned respectfully recommends that

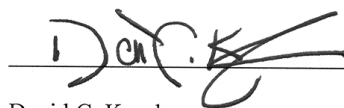
Defendants' "Motion To Dismiss" (Document No. 3), and "Defendant Mortgage Contracting Services, LLC's Amended Motion To Dismiss Or, In the Alternative, For More Definite Statement Or To Strike" (Document No. 6) be **GRANTED**; and that "Defendant Mortgage Contracting Services, LLC's Motion To Dismiss Or, In The Alternative, For More Definite Statement" (Document No. 5) be **DENIED AS MOOT**.

### **TIME FOR OBJECTIONS**

The parties are hereby advised that pursuant to 28 U.S.C. § 636(b)(1)(C), and Rule 72 of the Federal Rules of Civil Procedure, written objections to the proposed findings of fact, conclusions of law, and recommendation contained herein may be filed within **fourteen (14) days** of service of same. Responses to objections may be filed within fourteen (14) days after service of the objections. Fed.R.Civ.P. 72(b)(2). Failure to file objections to this Memorandum and Recommendation with the District Court constitutes a waiver of the right to *de novo* review by the District Court. Diamond v. Colonial Life, 416 F.3d 310, 315-16 (4th Cir. 2005). Moreover, failure to file timely objections will preclude the parties from raising such objections on appeal. Diamond, 416 F.3d at 316; Page v. Lee, 337 F.3d 411, 416 n.3 (4th Cir. 2003); Snyder v. Ridenhour, 889 F.2d 1363, 1365 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140, 147-48 (1985), *reh'g denied*, 474 U.S. 1111 (1986).

**IT IS SO RECOMMENDED.**

Signed: November 7, 2012

  
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David C. Keesler  
United States Magistrate Judge

